

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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U.S. Customs Service

T.D. 99-72 Through 99-74

General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 99-72)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR SEPTEMBER 1999

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): September 6, 1999.

Austria schilling:

September 1, 1999	\$.076902
September 2, 1999	.077680
September 3, 1999	.077070
September 4, 1999	.077070
September 5, 1999	.077070
September 6, 1999	.077070
September 7, 1999	.076895
September 8, 1999	.076961
September 9, 1999	.076619
September 10, 1999	.075594
September 11, 1999	.075594
September 12, 1999	.075594
September 13, 1999	.075580
September 14, 1999	.075638
September 15, 1999	.075471
September 16, 1999	.075711
September 17, 1999	.075572
September 18, 1999	.075572
September 19, 1999	.075572
September 20, 1999	.075638
September 21, 1999	.076016
September 22, 1999	.076306
September 23, 1999	.075689
September 24, 1999	.076059
September 25, 1999	.076059
September 26, 1999	.076059
September 27, 1999	.075805
September 28, 1999	.076372
September 29, 1999	.077128
September 30, 1999	.077346

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
September 1999 (continued):

Belgium franc:

September 1, 1999	\$.026232
September 2, 1999	.026497
September 3, 1999	.026289
September 4, 1999	.026289
September 5, 1999	.026289
September 6, 1999	.026289
September 7, 1999	.026230
September 8, 1999	.026252
September 9, 1999	.026135
September 10, 1999	.025786
September 11, 1999	.025786
September 12, 1999	.025786
September 13, 1999	.025781
September 14, 1999	.025801
September 15, 1999	.025744
September 16, 1999	.025826
September 17, 1999	.025778
September 18, 1999	.025778
September 19, 1999	.025778
September 20, 1999	.025801
September 21, 1999	.025930
September 22, 1999	.026029
September 23, 1999	.025818
September 24, 1999	.025945
September 25, 1999	.025945
September 26, 1999	.025945
September 27, 1999	.025858
September 28, 1999	.026051
September 29, 1999	.026309
September 30, 1999	.026383

Finland markka:

September 1, 1999	\$.177976
September 2, 1999	.179776
September 3, 1999	.178363
September 4, 1999	.178363
September 5, 1999	.178363
September 6, 1999	.178363
September 7, 1999	.177960
September 8, 1999	.178111
September 9, 1999	.177321
September 10, 1999	.174949
September 11, 1999	.174949
September 12, 1999	.174949
September 13, 1999	.174915
September 14, 1999	.175050
September 15, 1999	.174663
September 16, 1999	.175218
September 17, 1999	.174899
September 18, 1999	.174899
September 19, 1999	.174899
September 20, 1999	.175050
September 21, 1999	.175925
September 22, 1999	.176597
September 23, 1999	.175168
September 24, 1999	.176025

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
September 1999 (continued):

Finland markka (continued):

September 25, 1999	\$.176025
September 26, 1999	.176025
September 27, 1999	.175437
September 28, 1999	.176749
September 29, 1999	.178498
September 30, 1999	.179002

France franc:

September 1, 1999	\$.161322
September 2, 1999	.162953
September 3, 1999	.161672
September 4, 1999	.161672
September 5, 1999	.161672
September 6, 1999	.161672
September 7, 1999	.161306
September 8, 1999	.161444
September 9, 1999	.160727
September 10, 1999	.158577
September 11, 1999	.158577
September 12, 1999	.158577
September 13, 1999	.158547
September 14, 1999	.158669
September 15, 1999	.158318
September 16, 1999	.158821
September 17, 1999	.158532
September 18, 1999	.158532
September 19, 1999	.158532
September 20, 1999	.158669
September 21, 1999	.159462
September 22, 1999	.160071
September 23, 1999	.158776
September 24, 1999	.159553
September 25, 1999	.159553
September 26, 1999	.159553
September 27, 1999	.159020
September 28, 1999	.160209
September 29, 1999	.161794
September 30, 1999	.162251

Germany deutsche mark:

September 1, 1999	\$.0541049
September 2, 1999	.546520
September 3, 1999	.542225
September 4, 1999	.542225
September 5, 1999	.542225
September 6, 1999	.542225
September 7, 1999	.540998
September 8, 1999	.541458
September 9, 1999	.539055
September 10, 1999	.531846
September 11, 1999	.531846
September 12, 1999	.531846
September 13, 1999	.531744
September 14, 1999	.532153
September 15, 1999	.530977
September 16, 1999	.532664

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for September 1999 (continued):

Germany deutsche mark (continued):

September 17, 1999	\$0.531692
September 18, 1999	.531692
September 19, 1999	.531692
September 20, 1999	.532153
September 21, 1999	.534811
September 22, 1999	.536856
September 23, 1999	.532510
September 24, 1999	.535118
September 25, 1999	.535118
September 26, 1999	.535118
September 27, 1999	.533329
September 28, 1999	.537317
September 29, 1999	.542634
September 30, 1999	.544168

Greece drachma:

September 1, 1999	\$0.003243
September 2, 1999	.003275
September 3, 1999	.003247
September 4, 1999	.003247
September 5, 1999	.003247
September 6, 1999	.003247
September 7, 1999	.003231
September 8, 1999	.003238
September 9, 1999	.003223
September 10, 1999	.003183
September 11, 1999	.003183
September 12, 1999	.003183
September 13, 1999	.003187
September 14, 1999	.003185
September 15, 1999	.003184
September 16, 1999	.003192
September 17, 1999	.003185
September 18, 1999	.003185
September 19, 1999	.003185
September 20, 1999	.003186
September 21, 1999	.003195
September 22, 1999	.003213
September 23, 1999	.003188
September 24, 1999	.003192
September 25, 1999	.003192
September 26, 1999	.003192
September 27, 1999	.003178
September 28, 1999	.003195
September 29, 1999	.003225
September 30, 1999	.003239

Ireland pound:

September 1, 1999	\$1.343637
September 2, 1999	1.357223
September 3, 1999	1.346557
September 4, 1999	1.346557
September 5, 1999	1.346557
September 6, 1999	1.346557
September 7, 1999	1.343510
September 8, 1999	1.344653

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
September 1999 (continued):

Ireland pound (continued):

September 9, 1999	\$1.338685
September 10, 1999	1.320782
September 11, 1999	1.320782
September 12, 1999	1.320782
September 13, 1999	1.320528
September 14, 1999	1.321543
September 15, 1999	1.318623
September 16, 1999	1.322813
September 17, 1999	1.320401
September 18, 1999	1.320401
September 19, 1999	1.320401
September 20, 1999	1.321543
September 21, 1999	1.328146
September 22, 1999	1.333225
September 23, 1999	1.322432
September 24, 1999	1.328908
September 25, 1999	1.328908
September 26, 1999	1.328908
September 27, 1999	1.324464
September 28, 1999	1.334368
September 29, 1999	1.347573
September 30, 1999	1.351382

Italy lira:

September 1, 1999	\$0.000547
September 2, 1999	.000552
September 3, 1999	.000548
September 4, 1999	.000548
September 5, 1999	.000548
September 6, 1999	.000548
September 7, 1999	.000546
September 8, 1999	.000547
September 9, 1999	.000545
September 10, 1999	.000537
September 11, 1999	.000537
September 12, 1999	.000537
September 13, 1999	.000537
September 14, 1999	.000538
September 15, 1999	.000536
September 16, 1999	.000538
September 17, 1999	.000537
September 18, 1999	.000537
September 19, 1999	.000537
September 20, 1999	.000538
September 21, 1999	.000540
September 22, 1999	.000542
September 23, 1999	.000538
September 24, 1999	.000541
September 25, 1999	.000541
September 26, 1999	.000541
September 27, 1999	.000539
September 28, 1999	.000543
September 29, 1999	.000548
September 30, 1999	.000550

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for September 1999 (continued):

Luxembourg franc:

September 1, 1999	\$.026232
September 2, 1999	.026497
September 3, 1999	.026289
September 4, 1999	.026289
September 5, 1999	.026289
September 6, 1999	.026289
September 7, 1999	.026230
September 8, 1999	.026252
September 9, 1999	.026135
September 10, 1999	.025786
September 11, 1999	.025786
September 12, 1999	.025786
September 13, 1999	.025781
September 14, 1999	.025801
September 15, 1999	.025744
September 16, 1999	.025826
September 17, 1999	.025778
September 18, 1999	.025778
September 19, 1999	.025778
September 20, 1999	.025801
September 21, 1999	.025930
September 22, 1999	.026029
September 23, 1999	.025818
September 24, 1999	.025945
September 25, 1999	.025945
September 26, 1999	.025945
September 27, 1999	.025858
September 28, 1999	.026051
September 29, 1999	.026309
September 30, 1999	.026383

Netherlands guilder:

September 1, 1999	\$.480190
September 2, 1999	.485046
September 3, 1999	.481234
September 4, 1999	.481234
September 5, 1999	.481234
September 6, 1999	.481234
September 7, 1999	.480145
September 8, 1999	.480553
September 9, 1999	.478420
September 10, 1999	.472022
September 11, 1999	.472022
September 12, 1999	.472022
September 13, 1999	.471931
September 14, 1999	.472294
September 15, 1999	.471251
September 16, 1999	.472748
September 17, 1999	.471886
September 18, 1999	.471886
September 19, 1999	.471886
September 20, 1999	.472294
September 21, 1999	.474654
September 22, 1999	.476469
September 23, 1999	.472612
September 24, 1999	.474926

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
September 1999 (continued):

Netherlands guilder (continued):

September 25, 1999	\$.0474926
September 26, 1999	.474926
September 27, 1999	.473338
September 28, 1999	.476878
September 29, 1999	.481597
September 30, 1999	.482958

Portugal escudo:

September 1, 1999	\$0.005278
September 2, 1999	.005332
September 3, 1999	.005290
September 4, 1999	.005290
September 5, 1999	.005290
September 6, 1999	.005290
September 7, 1999	.005278
September 8, 1999	.005282
September 9, 1999	.005259
September 10, 1999	.005188
September 11, 1999	.005188
September 12, 1999	.005188
September 13, 1999	.005187
September 14, 1999	.005191
September 15, 1999	.005180
September 16, 1999	.005196
September 17, 1999	.005187
September 18, 1999	.005187
September 19, 1999	.005187
September 20, 1999	.005191
September 21, 1999	.005217
September 22, 1999	.005237
September 23, 1999	.005195
September 24, 1999	.005220
September 25, 1999	.005220
September 26, 1999	.005220
September 27, 1999	.005203
September 28, 1999	.005242
September 29, 1999	.005294
September 30, 1999	.005309

South Korea won:

September 1, 1999	\$0.000844
September 2, 1999	.000840
September 3, 1999	.000839
September 4, 1999	.000839
September 5, 1999	.000839
September 6, 1999	.000839
September 7, 1999	.000838
September 8, 1999	.000837
September 9, 1999	.000840
September 10, 1999	.000839
September 11, 1999	.000839
September 12, 1999	.000839
September 13, 1999	.000840
September 14, 1999	.000837
September 15, 1999	.000839
September 16, 1999	.000834

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for September 1999 (continued):

South Korea won (continued):

September 17, 1999	.....	\$0.000831
September 18, 1999	.....	.000831
September 19, 1999	.....	.000831
September 20, 1999	.....	.000833
September 21, 1999	.....	.000831
September 22, 1999	.....	.000826
September 23, 1999	.....	.000827
September 24, 1999	.....	.000824
September 25, 1999	.....	.000824
September 26, 1999	.....	.000824
September 27, 1999	.....	.000826
September 28, 1999	.....	.000821
September 29, 1999	.....	.000821
September 30, 1999	.....	.000822

Spain peseta:

September 1, 1999	.....	\$0.006360
September 2, 1999	.....	.006424
September 3, 1999	.....	.006374
September 4, 1999	.....	.006374
September 5, 1999	.....	.006374
September 6, 1999	.....	.006374
September 7, 1999	.....	.006359
September 8, 1999	.....	.006365
September 9, 1999	.....	.006336
September 10, 1999	.....	.006252
September 11, 1999	.....	.006252
September 12, 1999	.....	.006252
September 13, 1999	.....	.006251
September 14, 1999	.....	.006255
September 15, 1999	.....	.006242
September 16, 1999	.....	.006261
September 17, 1999	.....	.006250
September 18, 1999	.....	.006250
September 19, 1999	.....	.006250
September 20, 1999	.....	.006255
September 21, 1999	.....	.006287
September 22, 1999	.....	.006311
September 23, 1999	.....	.006260
September 24, 1999	.....	.006290
September 25, 1999	.....	.006290
September 26, 1999	.....	.006290
September 27, 1999	.....	.006269
September 28, 1999	.....	.006316
September 29, 1999	.....	.006379
September 30, 1999	.....	.006397

Taiwan N.T. dollar:

September 1, 1999	.....	\$0.031368
September 2, 1999	.....	.031397
September 3, 1999	.....	.031397
September 4, 1999	.....	.031397
September 5, 1999	.....	.031397
September 6, 1999	.....	.031397
September 7, 1999	.....	.031368
September 8, 1999	.....	.031447

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
September 1999 (continued):

Taiwan N.T. dollar (continued):

September 9, 1999	\$.031368
September 10, 1999	.031397
September 11, 1999	.031397
September 12, 1999	.031397
September 13, 1999	.031397
September 14, 1999	.031397
September 15, 1999	.031417
September 16, 1999	.031447
September 17, 1999	.031417
September 18, 1999	.031417
September 19, 1999	.031417
September 20, 1999	.031496
September 21, 1999	.031348
September 22, 1999	.031368
September 23, 1999	.031368
September 24, 1999	.031397
September 25, 1999	.031397
September 26, 1999	.031397
September 27, 1999	.031397
September 28, 1999	.031397
September 29, 1999	.031397
September 30, 1999	.031397

Dated: October 1, 1999.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 99-73)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR SEPTEMBER 1999

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 99-54 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): September 6, 1999.

Brazil real:

September 1, 1999	.....	\$0.521648
September 2, 1999	.....	.519751
September 3, 1999	.....	.525486
September 4, 1999	.....	.525486
September 5, 1999	.....	.525486
September 6, 1999	.....	.525486
September 7, 1999	.....	.524934
September 8, 1999	.....	.527148
September 9, 1999	.....	.533903
September 10, 1999	.....	.538503
September 11, 1999	.....	.538503
September 12, 1999	.....	.538503
September 13, 1999	.....	.530504
September 14, 1999	.....	.527009
September 15, 1999	.....	.531915
September 16, 1999	.....	.531208
September 17, 1999	.....	.529101
September 18, 1999	.....	.529101
September 19, 1999	.....	.529101
September 20, 1999	.....	.533618
September 21, 1999	.....	.531915
September 22, 1999	.....	.527426
September 23, 1999	.....	.528821
September 24, 1999	.....	.521512
September 25, 1999	.....	.521512
September 26, 1999	.....	.521512
September 27, 1999	.....	.520021
September 28, 1999	.....	.516262
September 29, 1999	.....	.520291
September 30, 1999	.....	.520562

Japan yen:

September 1, 1999	.....	\$0.009145
September 2, 1999	.....	.009154
September 3, 1999	.....	.009083
September 4, 1999	.....	.009083
September 5, 1999	.....	.009083
September 6, 1999	.....	.009083
September 7, 1999	.....	.009016
September 8, 1999	.....	.009010

FOREIGN CURRENCIES—Variances from quarterly rates for September 1999 (continued):

Japan yen (continued):

September 9, 1999	\$0.009259
September 10, 1999	.009174
September 11, 1999	.009174
September 12, 1999	.009174
September 13, 1999	.009417
September 14, 1999	.009494
September 15, 1999	.009636
September 16, 1999	.009515
September 17, 1999	.009351
September 18, 1999	.009351
September 19, 1999	.009351
September 20, 1999	.009397
September 21, 1999	.009537
September 22, 1999	.009613
September 23, 1999	.009599
September 24, 1999	.009602
September 25, 1999	.009602
September 26, 1999	.009602
September 27, 1999	.009428
September 28, 1999	.009422
September 29, 1999	.009363
September 30, 1999	.009362

Thailand baht (tical):

September 1, 1999	\$0.025760
September 2, 1999	.025733
September 3, 1999	.025740
September 4, 1999	.025740
September 5, 1999	.025740
September 6, 1999	.025740
September 7, 1999	.025513
September 8, 1999	.025189
September 9, 1999	.025316
September 10, 1999	.025323
September 11, 1999	.025323
September 12, 1999	.025323
September 13, 1999	.025329
September 14, 1999	.025265
September 15, 1999	.025297
September 16, 1999	.024969
September 17, 1999	.024994
September 18, 1999	.024994
September 19, 1999	.024994
September 20, 1999	.024919
September 21, 1999	.024839
September 22, 1999	.024704
September 23, 1999	.024149
September 24, 1999	.024349
September 25, 1999	.024349
September 26, 1999	.024349
September 27, 1999	.024420
September 28, 1999	.024027

FOREIGN CURRENCIES—Variances from quarterly rates for September 1999 (continued):

Thailand baht (tical) (continued):

September 29, 1999	\$0.024219
September 30, 1999 .....	.024402

Dated: October 1, 1999.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 99-74)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE:

OCTOBER 1, 1999 THROUGH DECEMBER 31, 1999

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	\$0.654000
Brazil	Real	0.520021
Canada	Dollar	0.679117
China, P.R.	Yuan	0.120805
Denmark	Krone	0.144165
Hong Kong	Dollar	0.128725
India	Rupee	0.022868
Iran	Rial	N/A
Israel	New Sheqel	N/A
Japan	Yen	0.009517
Malaysia	Ringgit	0.263158
Mexico	New Peso	0.106326
New Zealand	Dollar	0.516700
Norway	Krone	0.129997
Philippines	Peso	N/A
Singapore	Dollar	0.590319
South Africa, Republic of	Rand	0.166251
Sri Lanka	Rupee	0.013899
Sweden	Krona	0.122707
Switzerland	Franc	0.672631
Thailand	Baht (tical)	0.024600
United Kingdom	Pound Sterling	1.655000
Venezuela	Bolivar	0.001591

Dated: October 1, 1999.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties Division, Office of Field Operations, (415) 782-9442. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at (202) 927-6900.

SUPPLEMENTARY INFORMATION

BACKGROUND

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103-465, 108 Stat. 4809)(signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a semi-annual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of

lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

REASONABLE CARE REQUIRED

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

- 1) Has the importer had a prior relationship with the named party?
- 2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?
- 3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?
- 4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?
- 5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?
- 6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?
- 7) What is the history of this country regarding this commodity?
- 8) Have you asked questions of your supplier regarding the origin of the product?
- 9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On April 6, 1999, Customs published a Notice in the Federal Register (64 FR 16781) which identified 24 (twenty-four) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A LIST

For the period ending September 30, 1999, Customs has identified 26 (twenty-six) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 8 new entities and 6 removals to the 24 entities named on the list published on April 6, 1999. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 26 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 26 foreign parties are as

follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (9/99)

Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10-16, 4/F, Yuen Long, New Territories, Hong Kong. (9/99)

BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (9/99)

Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368-370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)

Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (9/99)

Excelsior Industrial Company, 311-313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)

Eun Sung Guatemala, S.A., 13 Calle 3-62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)

Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)

Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A-D, Macau. (9/99)

Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B-C, Centro Ind. Keck Seng (Torre 1), Macau. (9/99)

Fabrica de Artigos de Vestuario Pou Chi, Avenida General Castelo Branco, 13, Andar, "C" Edificio Wang Kai, Macau. (9/99)

Glory Growth Trading Company, No.6 Ping Street, Flat 7-10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)

Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82-86 Wing Lok Street, Central, Hong Kong. (9/98)

G.T. Plus Ltd., Kowloon Centre, 29-43 Ashley Road, 4/F1, Tsimshatsui, Kowloon, Hong Kong. (3/99)

Jentex Industrial, 7-1 Fl., No. 246, Chang An E. Rd., Sec.2, Taipei, Taiwan. (3/97)

Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)

Liabie Trading Company, 1103 Kai Tak Commercial Building, 62-72 Stanley Street, Kowloon, Hong Kong. (9/98)

Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (9/99)

Mabco Limited, 6/F VIP Commercial Centre, 116-120 Canton Road, Kowloon, Hong Kong. (3/99)

McKowan Lowe & Company Limited, 1001-1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Rex Industries Limited, VIP Commercial Center, 116-120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)

Sannies Garment Factory, 35-41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)

Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1-2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)

Sun Kong Glove Factory, 188 San Wan Road, Units 32-35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)

Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)

Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

ADDITIONAL FOREIGN ENTITIES

In the April 6, 1999, Federal Register notice, Customs also solicited information regarding the whereabouts of 31 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 31 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 32 entities. This reflects the addition of two new entities and the removal of 1 entity to the list of 31 entities published on April 6, 1999.

Customs is soliciting information regarding the whereabouts of the following 32 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (9/99)

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)

Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)

Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)

Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)

Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)

Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)

Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)

Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)

Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2-4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (9/99)

Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)

K & J Enterprises, Witty Commercial Building, 1A-1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)

Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Kwuk Yuk Garment Factory, Kwong Industrial Building, 39-41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)

Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)

Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)

Maxwell Garment Factory, Unit C, 21/F, 78-84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)

New Leo Garment Factory Ltd, Galaxy Factory Building, 25-27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)

Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)

Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Round Ford Investments, 37-39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)

Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuan-shin, Shanghai, China. (9/97)

Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)

Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)

Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)

United Textile and Weaving, P.O. Box 40355, Sharjah, United Arab Emirates. (3/97)

Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)

Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)

Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5-8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)

Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)

Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 32 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dated: September 29, 1999.

CHARLES W. WINWOOD,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, October 5, 1999 (64 FR 54067)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 6, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED MODIFICATION OF RULING LETTER AND
TREATMENT CONCERNING COUNTRY OF ORIGIN OF PAINT
BRUSHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of country of origin ruling letter and treatment of certain paint brushes.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the origin of certain paint brushes and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited concerning the correctness of the intended action.

DATE: Comments must be received on or before November 19, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Marjorie Cole, Special Classification and Marking Branch, (202) 927-2334.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the origin of paint brushes. Although in this notice Customs is specifically referring to one ruling, New York ruling (NY) D83257, dated October 20, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on the merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States ("HTSUS"). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY D83257, dated October 20, 1998, which is set forth as Attachment A, certain paint brushes were determined to be of Chinese origin. Since the issuance of NY D83257, this office has revisited the origin of this merchandise and has determined that the outcome in NY D83257 is

in error. At issue in this proposed modification is the correct origin of the merchandise, i.e., paint brushes consisting of Chinese bristles, German handles and ferrules of either Italian or Dutch origin which are assembled in Holland.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY D83257, and any other ruling not specifically identified, to reflect the proper origin of the subject paint brushes to be Holland, pursuant to the analysis set forth in Proposed Ruling Letter HQ 561279, set forth as Attachment B. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 30, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, October 20, 1998.
CLA-2-96:RR:NC:SP:233 D83257
Category: Classification; Marking
Tariff No. 9603.40.4040

MR. ROBERT PETREK
GOLDEN MERMAID INC.
3130 Zaharias Drive
Orlando, FL 32837

Re: The tariff classification and country of origin marking of paint brushes with Chinese bristles assembled in Holland.

DEAR MR. PETREK:

In your letter dated October 5, 1998, you requested a tariff classification ruling.

The merchandise to be imported consists of paintbrushes which are assembled in Holland. The brush components and their countries of origin are as follows:

Bristles—	China
Ferrule—	extruded plastic with the plastic extrusion process taking place in The Netherlands (Holland) or metal ferrule produced in Italy
Wooden Handle—	shaped and painted in Germany
Epoxy—	product of The Netherlands (Holland)

The bristles are shipped from China to Holland where they are sorted, weighed into the desired quantity for an individual brush and then one end of the bristles are trimmed so that the tops of the bristles are completely level and flat. The brushes are then inserted into a ferrule to hold them in the desired shape and a convex object is inserted into the ferrule, forcing the exterior ends of the bristles to take on the desired curved shape. The interior ends of the bristles are then shaved and the ferrule is filled with epoxy. A wooden handle is

painted to include the manufacturer's information, a logo glued in place and a hang-up hole is drilled. The wooden handle is then inserted into the epoxy and allowed to set. Loose bristles are removed, the individual brush is shrink wrapped, and sets of 6 or 12 are boxed.

The applicable subheading for the paintbrushes will be 9603.40.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for paint, distemper, varnish or similar brushes; paint pads and rollers: natural bristle brushes. The rate of duty will be 4% ad valorem.

Natural bristle paintbrushes from China may be subject to antidumping duties. We suggest you write to the following address for information concerning this issue prior to importation:

Office of Antidumping Investigations
Import Administration
International Trade Administration
U.S. Department of Commerce
14th Street and Constitution Ave., N.W.
Washington, DC 20230

You have also requested a country of origin ruling regarding the paintbrushes. Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.41(b), Customs Regulations (19 C.F.R. §134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. In this case, the ultimate purchaser of the imported paintbrushes is the consumer who purchases the product at retail.

Section 134.1(b), Customs Regulations (19 C.F.R. §134.1(b)), defines the country of origin as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin within the meaning of 19 C.F.R. Part 134.

A substantial transformation occurs when articles lose their identity and become new articles having a new name, character or use. The processing which will take place in Holland will not effect a substantial transformation. The bristles are the very essence of the finished paintbrush and do not become a new article having a new name, character or use. Accordingly, the country of origin is China and the paintbrushes must be marked to indicate that China is the country of origin.

Regarding your country of origin marking, you may add "Assembled in Holland" as long as the paintbrushes are marked to indicate China as the country of origin.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-02 RR:CR:SM 561279 MFC
Category: Classification

PHILIP YALE SIMONS, ESQ.
SIMONS & WISKIN
90 West Street
10th floor
New York, NY 10006

Re: Modification of NY D83257; country of origin determination of imported paint brushes; substantial transformation.

DEAR MR. SIMONS:

This is in response to your letter dated January 29, 1999, on behalf of Golden Mermaid, Inc. ("Golden Mermaid"), which requests reconsideration of New York Ruling Letter (NY) D83257, dated October 20, 1998, regarding the country of origin of paint brushes imported from Holland. You submitted additional information by letter of September 21, 1999, in response to our inquiry.

Facts:

Your client imports paint brushes from Holland. The paint brushes are comprised of brushes made of Chinese hog bristles, wooden handles made in Germany, and ferrules either made in Italy of metal or in Holland of plastic. You state that the Chinese bristles imported into Holland are raw bristles which have not been pre-treated in any manner.

The bristles are shipped from China to Holland packed in cardboard rings of approximately four inches in diameter. In Holland, a complicated, multi-step manufacturing operation produces the brushes to be imported by Golden Mermaid. You assert that the process used by Golden Mermaid is significantly different from those used by its competitors.

In Holland, the Chinese bristles are removed from their cardboard rings and placed in a machine which mixes and blends the bristles to achieve a blend which works best with solvent and water-based paints. When placing the different varieties of bristles into the blending machine, the machine operator visually inspects the bristles and manually aligns all of the bristles so that the ends are lined up in the same direction. Bristles that are not aligned are removed and replaced. After the bristles are blended, they are allowed to settle in order for the static electricity produced during the blending operation to dissipate.

A small hole is drilled in the handles and the handle is painted with the manufacturer's bar code and other brand and size information. The Golden Mermaid logo is attached to the end of the handle with adhesive.

For each size of brush, a specific weight of bristles is measured by machine and placed into a specifically designed device which gives the brush a unique shape. This process allows the natural ends of the bristles to remain intact, which distinguishes it from other manufacturing processes in which the ends of the bristles are cut and shaved to give the brush its shape.

The other end of the bristles, which is to become the ferrule end, is trimmed or shaved so that all the bristles are of an equal length. The shaved end of the bristles is placed into a ferrule, with the ends of the bristles inserted to the same depth. A core is placed between the bristles to separate them which enhances capillary action to draw the paint onto the brush. Epoxy is forced into the open end of the ferrule which sets the bristles. Before the epoxy sets, a brush handle is inserted into the ferrule. The brush handle for flat brushes has been cut into a dovetail shape which forms a connection with the epoxy that, unlike the traditional method used to produce paint brushes, leaves no void within the ferrule. After the epoxy sets, the brushes are inspected, packaged, and boxed for shipment.

In NY D83257, the Port of New York determined the origin of the imported paint brushes to be China based on the origin of the bristles.

Issues:

What is the country of origin of the finished paint brushes?

Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Congressional intent in enacting 19 U.S.C. §1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.1(b), Customs Regulations (19 CFR §134.1(b)), defines country of origin as "the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin within the meaning of [the marking laws and regulations] * * *."

A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, or use which differs from the original material subjected to the process. *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940); *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982).

In *Gibson-Thomsen*, the court held that imported wood brush block and toothbrush handles into which U.S.-origin bristles were inserted in the U.S. lost their identity as handles and became new articles having a new name, character, and use. The court looked at whether the imported article lost its identity when combined with other articles and concluded that wood handles were mere materials to be used in the manufacture of toothbrushes and hairbrushes in the U.S. The court found that the ultimate purchaser of the wood brush blocks and toothbrush handles was the manufacturer and that the blocks and handles were substantially transformed during the manufacture so that they were no longer required to be marked. Therefore, the court concluded that a mere material to be used in the manufacture of a new article in the U.S. having a new name, character, and use, and which became an integral part of the new article would not be required to be marked.

In Headquarters Ruling Letter ("HQ") 733199 (July 19, 1990), bristles attached to metal ferrules were imported from China into the Philippines where they were attached to brush handles of Philippine origin. The bristle heads were trimmed so that the bristles were level and cleaned to remove any loose bristles. The Philippine origin handles were then attached to the bristle heads and ferrules. The ruling distinguished *Gibson-Thomsen* as that case examined whether the handles were substantially transformed after being inserted with bristles. The ruling held that the bristles were the very essence of the paint brush and did not become a new article having a new name, character or use, and therefore the origin of the paint brush remained the same as the origin of the bristles, China. The ruling noted that the bristles were substantially finished prior to arriving in the Philippines and required only trimming and cleaning prior to attachment of the handle in the Philippines.

In NY D83257, like in HQ 733199, it was determined that the bristles are the very essence of the finished paint brush and do not become a new article having a new name, character or use when combined with the handle and ferrule in Holland. That ruling determined that the processing which takes place in Holland does not effect a substantial transformation.

We disagree. We find that HQ 733199 is distinguishable from the facts of this case. In HQ 733199, the Chinese-origin bristles imported into the Philippines were already attached and set into the ferrules. It was only necessary to trim and clean the bristles and then attach the bristle heads to the handles. However, in this case, raw, untreated hog bristles of Chinese origin are imported into Holland in bulk where they are blended, aligned, trimmed on the ferrule end, measured by weight for each size brush, inserted into the ferrule and permanently set within the ferrule by means of epoxy. The handle is then attached to the ferrule. In their condition as imported into Holland, the raw bristles are not dedicated to

use solely as paint brush heads but have other potential uses.¹ Unlike the bristle heads involved in HQ 733199, the raw bristles involved in this case cannot be said to represent the "very essence" of the finished paint brushes. Thus, we find that the bristles and other components imported into Holland are substantially transformed when processed into finished paint brushes. Accordingly, the country of origin of the paint brushes is Holland and they must be so marked.

Holding:

The Chinese-origin bristles are substantially transformed by the processing in Holland. Accordingly, the country of origin of the finished paint brushes is Holland.

NY D83257 is hereby modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF TUNGSTEN CARBIDE WEAR PADS FOR
BLADES USED WITH SNOW PLOWS AND MOTOR GRADERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to tariff classification of tungsten carbide wear pads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of tungsten carbide wear pads, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles are sintered metal carbides or metal carbides sintered with a metal, called cermets. They are welded or brazed onto the edge of blades for bulldozers, motor graders, snow plows and other earth moving machines. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 19, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

¹ In your supplemental response to our inquiry, you indicated that in addition to being used in a variety of brushes, such as hairbrushes, cosmetic brushes, and in specialized brushes for non-painting applications, hog bristles may also be used as stuffing in upholstery, a source of fertilizer, and a source of certain amino acids.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of tungsten carbide wear pads. Although in this notice Customs is specifically referring to one ruling, NYD84998, dated November 25, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care

on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY D84998, certain tungsten carbide wear pads were held to be classifiable as cermets, in subheading 8113.00.00, HTSUS. This ruling was based on the fact that the articles were sintered metal carbides. NY D84998 is set forth as "Attachment A" to this document.

It is now Customs position that notwithstanding the fact these articles are cermets, they are integral, constituent components of blades for various earth moving machines. When the wear pads become worn, the entire blade is replaced. As these blades are considered "parts" for tariff purposes, the tungsten carbide wear pads are likewise considered parts, and are classifiable in subheading 8431.49.90, HTSUS, as other parts suitable for use solely or principally with machinery of headings 8525 to 8530, HTSUS. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke NY D84998 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 962735, which is set forth as "Attachment B" to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 4, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, November 25, 1998.
CLA-2-81:RR:NC:115:D84998
Category: Classification
Tariff No. 8113.00.0000

MS. PAMELA J. GRUSZCZYNSKI
MIDWEST TRANSATLANTIC LINES, INC.
1230 West Bagley Road
Berea, OH 44017-2910

Re: The tariff classification of carbide snowplow pads from China.

DEAR MS. GRUSZCZYNSKI:

In your letter dated November 18, 1998 you requested a tariff classification ruling on behalf of your client Hochtens Resources, Inc.

The sample submitted is an article of carbide. It is a wear pad specifically designed for snow blades. The are attached in a line and welded onto the blade. When the pad wears out it is replaced with another carbide pad.

The applicable subheading for the carbide pad will be 8113.00.0000, Harmonized Tariff Schedule of the United States (HTS) which provides for Cermets and articles thereof, including waste and scrap. The rate of duty will be 4.1% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-466-5487.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 962735 JAS

Category: Classification

Tariff No. 8431.49.90

MR. KEMIN SUN

HOCENZ RESOURCES, INC.

925 Irwin Run Road, Suite 203

West Mifflin, PA 15122

Re: NY D84998 Revoked; Carbide Wear Pads for Snow Plows and Motor Graders.

DEAR MR. SUN:

This is in response to your letter, dated April 8, 1999, reference CU90408a, in which you request reconsideration of NY D84998, a ruling on the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of tungsten carbide wear pads for blades used on snow plows and motor graders. Samples were submitted. We have reconsidered this ruling and now believe it is incorrect.

Facts:

In NY D84998, which the Director of Customs National Commodity Specialist Division, New York, issued to your Customs broker on November 25, 1998, tungsten carbide wear pads or inserts which form the cutting edge or working part of blades on snow plows, motor graders and bulldozers were held to be classified as cermets and articles thereof, under subheading 8113.00.00, HTSUS.

The wear pads are 88-90 percent tungsten carbide with 10-12 percent cobalt binder. They typically measure 3/8 in. x 9/16, 3/4, 5/8, 17/32 and 13/16 x 1 in. In the United States, steel bar is cut to customer-specified blade lengths and the tungsten carbide wear pads brazed or welded in a groove milled into the blades' edge. The finished blades are then drilled and bolted to the machine. The wear pads are not replaceable and become integral working parts of the blade. When the wear pads become worn, the entire blade is replaced.

The HTSUS provisions under consideration are as follows:

8113.00.00	Cermets and articles thereof, including waste and scrap
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
	Of machinery of heading 8426, 8429 or 8430:
8431.49	Other
8431.49.90	Other

Issue:

Whether the tungsten carbide wear pads are parts solely or principally used with earth moving machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Goods that are identifiable as parts of machines of headings 84 or 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. Under Note 2(a), parts which are goods included in a heading of Chapter 84 or Chapter 85 are in all cases to be classified in their respective headings. Under Note 2(b), parts that are solely or principally used with a particular kind of machine or with a number of machines of the same heading are to be classified with the machines of that kind, or in heading 8431, among other headings, as appropriate.

The tungsten carbide wear pads, being sintered metal carbides or metal carbides sintered with a metal, are considered cermets for tariff purposes. Consequently, NY D84998 classified the wear pads as cermets, in subheading 8113.00.00, HTSUS. It was stated in the decision that when the wear pad wore out it was replaced by another wear pad.

It is now apparent that the tungsten carbide wear pads become integral to the blade of the machine so that when the pads become worn the entire blade is replaced. This information is contained in a letter, dated April 23, 1999, from a domestic fabricator of blades for bulldozers, motor graders, snow plows and various other earth moving machines.

For tariff purposes, a "part" is an integral, constituent component of another article necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. The base metal blade is the component that enables the dozer or grader to perform the material removal function for which it was designed. Such blades are parts for tariff purposes. The tungsten carbide wear pads are integral components of and form the actual working part of the blade. Like the blades, the wear pads are parts for tariff purposes.

Holding:

Under the authority of GRI 1, and Section XVI, Note 2(b), HTSUS, the tungsten carbide wear pads are provided for in heading 8431. They are classifiable in subheading 8431.49.90, HTSUS.

Effect on Other Rulings:

NY D84998, dated November 25, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ELECTRIC/BATTERY POWERED DOMESTIC HEAT SEALING DEVICES

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of modification and revocation of tariff classification ruling letters and treatment relating to the classification of electric/battery powered, heat sealing devices which reseal plastic bags to preserve freshness of food or other contents.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling and revoking another ruling pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electric/battery powered, heat sealing devices which reseal plastic bags to preserve freshness of food or other contents. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification and revocation was published on August 25, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 34. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported

merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling Letter (NY) 882256, dated February 10, 1993, and NY 886927, dated June 18, 1993, respectively, a lightweight, cordless, battery-powered device used primarily in the home to seal plastic bags by the application of heat, and "impulse bag sealers"—electrical devices used to seal the ends of a plastic bag by manually pressing down a handle containing a heated electrical filament, were classified as other electric welding machines and apparatus under subheading 8515.80.00, HTSUS. Since the issuance of those rulings, Customs has had opportunity to review the classification of this merchandise and has determined that the classification is in error.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 882256 and modifying NY 886927, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQs 962014 and 962015 (*see* "Attachments A and B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this modification and revocation action will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Dated: October 1, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, October 1, 1999.

CLA-2 RR:CR:GC 962014:AML

Category: Classification

Tariff No. 8543.89.96

MR. WILLIAM J. DU
KING STAR INTERNATIONAL, INC.
581 Boylston Street
Suite 702BC
Boston, MA 02116

Re: Electric powered heat-sealing product; NY 886927 modified.

DEAR MR. DU:

This is in reference to New York Ruling Letter (NY) 886927, issued to you on June 13, 1993, by the Customs National Commodity Specialist Division, New York, in which, among other items not herein relevant, the PFS-200 and PFS-300 impulse bag sealers—electrical devices used to seal/close the ends of a plastic bag by manually pressing down a handle containing a heated electrical filament, were classified under subheading 8515.80.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for electric * * * welding machines and apparatus, whether or not capable of cutting; other machines and apparatus: other. We have reviewed that ruling and determined that the classification set forth is partially in error. The correct classification is set forth below.

Pursuant to section 625(c), Tariff act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY 886927 was published on August 25, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 34. No comments were received.

Facts:

The relevant articles in NY 886927 were described as the PFS-200 and PFS-300 impulse bag sealers—electrical devices used to seal/close the ends of a plastic bag by manually pressing down a handle containing a heated electrical filament. Further information was requested from the importer and provided in April, 1999.

The electric/battery powered heat sealing product roughly resembles a large paper cutter, with a thick base and large handle (instead of the paper-cutting blade) which operates by depressing the arm as one would a paper cutter. The PFS-200 and PFS-300 are constructed of cast iron or steel and are marketed to supermarkets and restaurants. When the interior surface of the hinged arm portion and the inner surface of the base make contact, heat is produced. The article is a product which uses micro-thermal technology to create an airtight seal of plastic bags to keep and preserve unused portions of food stored inside the bags.

Issue:

Whether the products are classified under subheading 8422.30.90, HTSUS, as other machinery for sealing bags; or subheading 8515.80.00, HTSUS, as electric * * * welding machines and apparatus, whether or not capable of cutting; other machines and apparatus: other; or subheading 8516.79.00, HTSUS, as other electrothermic appliances of a kind used for domestic purposes; or subheading 8543.89.96, HTSUS, which provides for other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

8422	Dishwashing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages; parts thereof:
8422.30	Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages:
8422.30.90	Other:
*	* * * * *
8515	Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermet; parts thereof:
8515.80.00	Other machines and apparatus.
*	* * * * *
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other electrothermic appliances:
8516.79.00	Other:
*	* * * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.89	Other:
	Other:
8543.89.96	Other:

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially we will determine whether the article is a mechanical device of Chapter 84, HTSUS, or electrical machinery of Chapter 85, HTSUS. The General EN to Chapter 84 (page 1233) states, in regard to the general content of the chapter:

Subject to the provisions of the General Explanatory Note to Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by Chapter 85 * * *. In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods * * *.

The only mechanical aspect in the articles is the paper cutter-like arm and hinge which facilitates the compression and union of the heat producing ends of the article. It is the electric aspect of the article which enables it to perform its function: heating bags to seal them. Therefore, pursuant to the General ENs for Chapter 84, we conclude that the article is not machinery for sealing bags or other containers of heading 8422, HTSUS.

Within Chapter 85, the competing headings are heading 8516, which provides for other electrothermic appliances of a kind used for domestic purposes, heading 8515, which provides for welding machines and apparatus, and heading 8543, which provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. EN 85.15, page 1466, describes the machines and apparatus of that heading (e.g., [b]razing or soldering machines and apparatus * * * in which metal parts are

joined * * * [;] [m]achines and apparatus for resistance welding of metal [;] [m]achines and apparatus for arc or plasma arc welding of metals * * *). Clearly these exemplars are not at all of the kind of the electrothermic device under consideration, which is incapable of generating the heat or other energy to perform the kind of welding in the exemplars.

EN 85.16 at page 1470 describes products which are classifiable pursuant to the heading and basic criteria for making such a determination. EN 85.16(E) states that "[t]his group includes all electro-thermic machines and appliances **provided they are normally used in the household** [emphasis in original]." We note that the provision for other electrothermic appliances of a kind used for domestic purposes in heading 8516 is governed by use (see *Group Italglass, U.S.A., Inc. v. United States*, 17 CIT 226 (1993)). The articles, by their size, weight and construction, are not intended for domestic (in the household) use. Rather, the PFS-200 and PFS-300 are designed as commercial sealers for mass production or food preservation in a larger, e.g., food service industry or restaurant, scale. Commercial sealers, such as those at issue, are of greater durability and larger capacity than those for domestic use and are marketed and made available for use in the commercial setting. Therefore, the articles may not be classified in heading 8516 as other electrothermic appliances of a kind used for *domestic purposes*, and classification falls to the residual provision for electrical machines and apparatus, in heading 8543, HTSUS. Cf. HQ 962015 of even date.

Holding:

NY 886927, dated June 13, 1993, is hereby modified as it pertains to the classification of the PFS-200 and the PFS-300 impulse bag sealers. The articles are classifiable under subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

Washington, DC, October 1, 1999.

CLA-2 RR:CR:GC 962015:AML

Category: Classification

Tariff No. 8516.79.00

MR. SHELDON STONE
ETA IMPORT & EXPORT, LTD.
1 Cross Island Plaza
Jamaica, NY 11422

Re: Electric/battery powered heat-sealing product; NY 882256 revoked.

DEAR MR. STONE:

This is in reference to New York Ruling Letter (NY) 882256, issued to you on behalf of E. Mishan and Sons, Inc., on February 10, 1993, by the Customs National Commodity Specialist Division, New York, in which an electric/battery powered heat sealing product was classified under subheading 8515.80.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other electric * * * welding machines and apparatus. We have reviewed that ruling and determined that the classification set forth is in error. The correct classification is set forth below.

Pursuant to section 625(c), Tariff act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY 882256 was published on August 25, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 34. No comments were received.

Facts:

The heat sealer in NY 882256 was described as "lightweight," "cordless," "powered by four size AA batteries" and as "being used primarily in the home to seal plastic bags by the application of heat." Generally, electric/battery powered heat sealing products roughly resemble a stapler, with a thick base and hinged handle which operates by depressing the end as one would a stapler. When the ends make contact, heat is produced in the range of 400-550 degrees Fahrenheit. The article is a household product which uses micro-thermal technology to create an airtight seal of plastic bags to keep and preserve unused portions of food stored inside the bags.

Issue:

Whether the product is classified under subheading 8422.30.90, HTSUS, as other machinery for sealing bags; subheading 8515.80.00, HTSUS, as other electric welding machines and apparatus; or subheading 8516.79.00, HTSUS, as other electrothermic appliances of a kind used for domestic purposes?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

8422	Dishwashing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages; parts thereof:
8422.30	Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages:
8422.30.90	Other.
*	* * * * *
8515	Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermets; parts thereof:
8515.80.00	Other machines and apparatus.
*	* * * * *
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
	Other electrothermic appliances:
8516.79.00	Other.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially we will determine whether the article is a mechanical device of Chapter 84, HTSUS, or electrical machinery of Chapter 85, HTSUS. The General EN to Chapter 84 (page 1233) states, in regard to the general content of the chapter:

Subject to the provisions of the General Explanatory Note to Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more speci-

cally covered by Chapter 85 * * * In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods * * *.

To the extent that the exceptions described in the ENs to these general rules are applicable to the merchandise under consideration, they indicate that domestic electromechanical appliances are classified in Chapter 85. The only mechanical aspect in the articles is the staple-like hinge which facilitates the compression and union of the heat producing ends of the article. It is the electric aspect of the article which enables it to perform its function: heating bags to seal them. Therefore, pursuant to the General ENs for Chapter 84, we conclude that the article is not machinery for sealing bags or other containers of heading 8422, HTSUS (see also Note 1(e), Chapter 84, HTSUS, which excludes from classification in Chapter 84 "electromechanical domestic devices of heading of 8509;" although the article is precluded from classification in subheading 8509 because it does not have a "self-contained electric motor;" Note 1(e) of Chapter 84 supports the exclusion of the article from Chapter 84 as a domestic electric device with only a minor mechanical aspect).

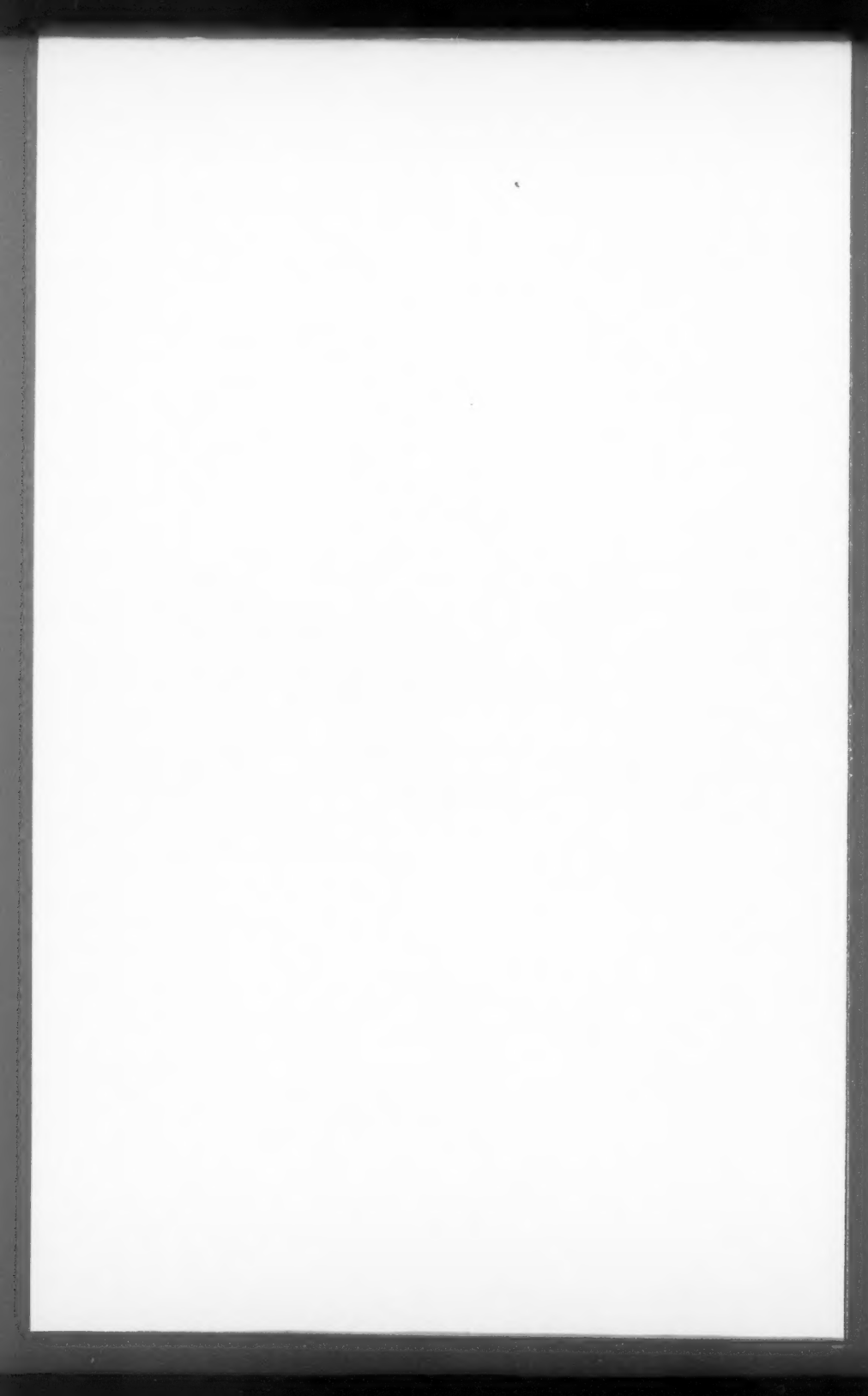
Within Chapter 85, the competing headings are heading 8515, which provides for welding machines and apparatus, and heading 8516, which provides for other electrothermic appliances of a kind used for domestic purposes. EN 85.15, page 1466, describes the machines and apparatus of that heading (e.g., [b]razing or soldering machines and apparatus * * * in which metal parts are joined * * * [;] [m]achines and apparatus for resistance welding of metal [;] [m]achines and apparatus for arc or plasma arc welding of metals * * *). Clearly these exemplars are not at all of the kind of the domestic electrothermic device under consideration, which is incapable of generating the heat or other energy to perform the kind of welding in the exemplars.

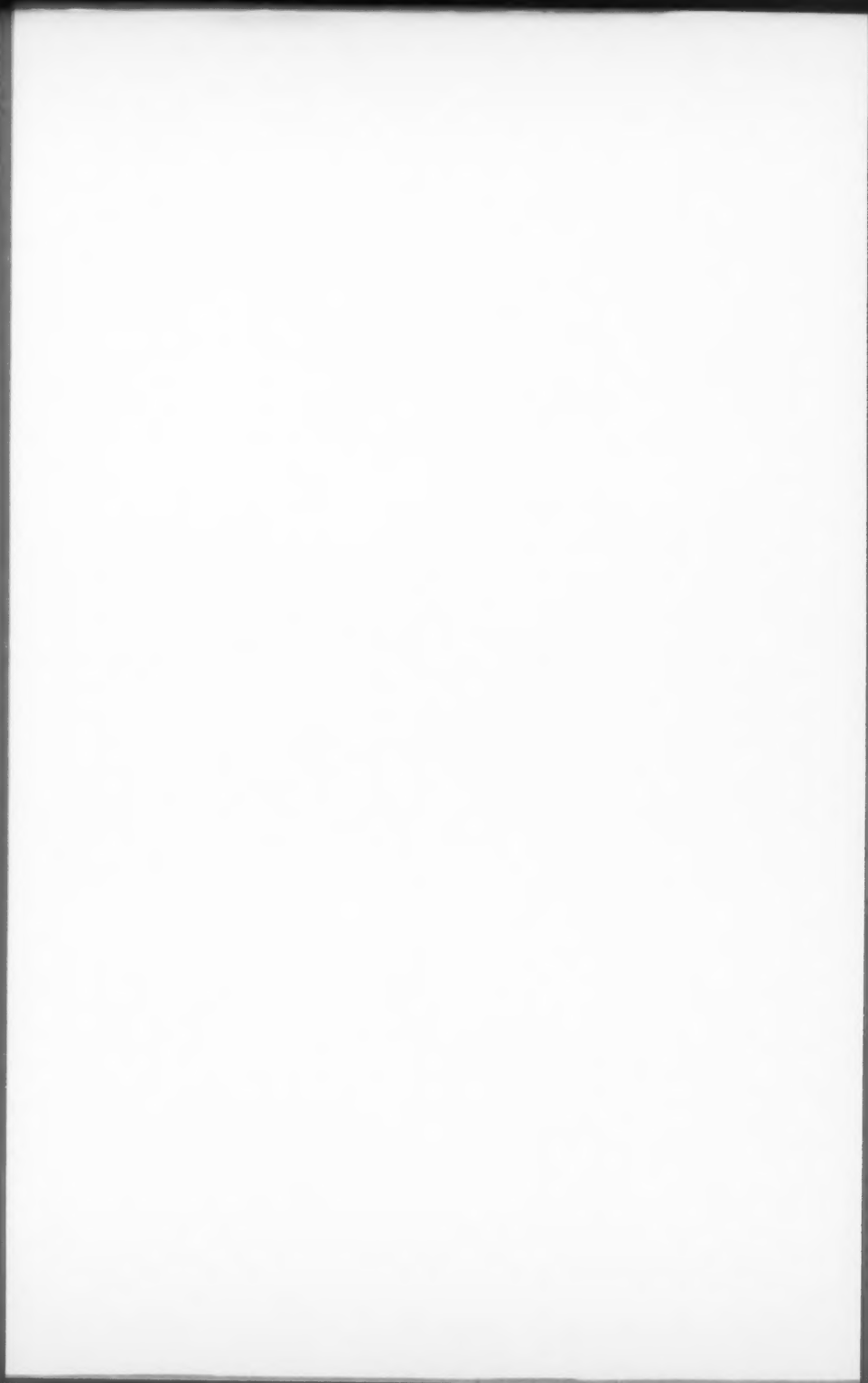
EN 85.16 at page 1470 describes products which are classifiable pursuant to the heading and basic criteria for making such a determination. EN 85.16(E) states that "[t]his group includes all electro-thermic machines and appliances **provided they are normally used in the household** [emphasis in original]." We note that the provision for other electrothermic appliances of a kind used for domestic purposes in heading 8516 is governed by use (see *Group Italglass, U.S.A., Inc. v. United States*, 17 CIT 226 (1993)). The article, by its size, weight and construction, is intended for use in the household. Cf. HQ 962014 of even date; see also HQs 962013 and 962167 of even date. The article is primarily used in the home, in order to preserve food products ordinarily consumed in the home. Therefore, the criteria established are satisfied and the product will be classified accordingly.

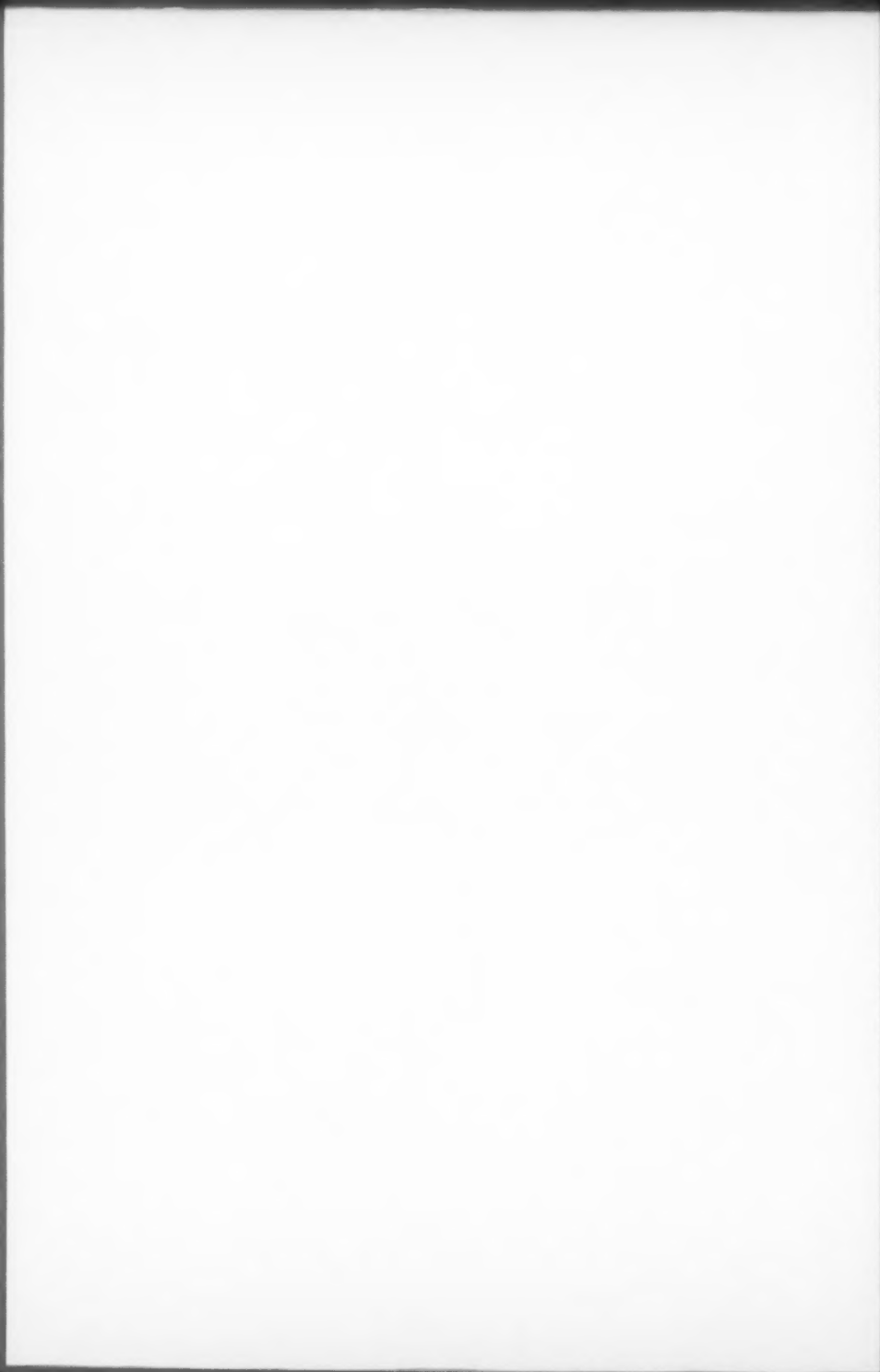
Holding:

NY 882256, dated February 10, 1993, is hereby **revoked**. The article is classifiable under subheading 8516.79.00, HTSUS, as an other electro-thermic appliance of a kind used for domestic purposes. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)







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